

Case C-62/20

Request for a preliminary ruling

Date lodged:

6 February 2020

Referring court:

Nederlandstalige rechtbank van eerste aanleg Brussel, 7^{de} Kamer
(Belgium)

Date of the decision to refer:

17 January 2020

Applicant:

NV Vogel Import Export

Defendant:

Belgische Staat

...

In the case of:

N.V. VOGEL IMPORT EXPORT, KBO 0882.538.959, having its registered office at 2000 Antwerp [Belgium], ...

applicant,

...

v:

BELGISCHE STAAT (BELGIAN STATE), in the person of the Minister van Financiën (Minister for Finance), with its offices at 1000 Brussels [Belgium], ...

defendant,

... [procedural background]

I. FACTS

1. On 30 October 2017, the company DKM Customs submitted an application for binding tariff information on behalf of the applicant for an article with the trade name ‘IPE Decking FAS (Profile S4S Surface 4 Sides — E4E Eased 4 Edges)’, namely, boards of Ipé wood which were planed along each side and all four corners of which were rounded (eased) along the entire length of the board.

‘S4S E4E’ stands for **S**urfaced **4** Sides — **E**ased **4** Edges. Surfaced timber is planed timber (*geschaafd*). The ‘eased’ means rounded. S4S E4E thus means that the wood is planed along the four sides and that the four corners are rounded.

The result of there being those four rounded corners is that there is no longer a rectangular cross-section. The rounding is applied over the entire length of each corner. In order to be able to make that ‘E4E’ profile, blades specially made for that purpose have to be mounted onto the planing bench. The four sides of the wood are worked and a smooth rounding is applied over the entire length of the board.

4. On 7 December 2017, Binding Tariff Information decision (‘BTI decision’) BE BTI D.T. 305.701 was issued to the applicant for ‘*Planed boards with an almost rectangular cross-section and slightly rounded long sides which do not facilitate assembly (neither tongued nor grooved or V-jointed), made of Ipé (according to specification). The boards have a thickness of 21 mm, a width of 145 mm and a length which varies between 1.82 and 4.53 m*’. According to that BTI decision, the goods in question must be classified under commodity code 4407 2983.

5. The applicant, however, is of the view that the goods in question must be classified under commodity code 4409 2200. On 12 January 2018, supplemented on 21 December 2018, the applicant lodged an administrative appeal against that decision.

6. By decision of the adviseur-generaal, departementshoofd — Hoofd van het Departement Geschillen (Adviser General, department head — Head of the Disputes Department), of 13 March 2019, reference D.C. 6003-010, that objection was rejected as unfounded.

II. SUBJECT MATTER OF THE CLAIM

7. The applicant’s claim, as formulated in its application, seeks to have the decision of the adviseur-generaal, of 13 March 2019, reference D.C. 6003-010, as well as the decision of 7 December 2017, reference BE BTI D.T. 305.701, ‘*annulled and/or declared null and void, or at least to obtain a declaration that no legal consequences whatsoever may be attached to them*’.

8. By heads of agreement lodged at the hearing of 20 December 2019, the parties request by common accord to refer the following questions to the Court of Justice of the European Union for a preliminary ruling:

‘1) Should the [Combined Nomenclature] — in the light also of the various language versions of tariff heading 4409 and the HS Explanatory Notes to tariff headings 4407 and 4409 — be interpreted as meaning that the goods which are the subject of the main proceedings, namely, planed wooden boards the four corners of which have been rounded over the entire length of the board, are to be regarded as being ‘continuously shaped’ and accordingly should be classified under tariff heading 4409 or can the rounding of the corners not be regarded as being ‘continuously shaped’ and should the goods therefore be classified under tariff heading 4407?’

2) Is the size of the rounding determinative for classification under tariff heading 4407 or tariff heading 4409?’

III. ASSESSMENT

III.1. Admissibility

9. [...] [assessment of admissibility] The claim is [...] admissible.

III.2. Substance of the case

III.2.1. Positions of the parties

III.2.1.1. Position of the applicant

10. The applicant is of the view that CN code 4407 2983 does not apply, but that the goods fall under heading 4409 and, more specifically, under CN code 4409 2200. In that regard, it refers first to the general rules for the interpretation of the commodity codes listed in Part I, Section I, A, of Annex I to Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff. It notes in the first place that tariff heading 4407 contains a very broad description of wood and wood products (‘Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm’), such that any sawn and/or planed board can be classified under that tariff heading. Tariff heading 4409 (‘Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed’ contains a more detailed description. The wood that was the object of the application for a BTI decision is wood continuously shaped along any of its edges, ends or faces, such that both tariff headings could apply. On the basis of the provisions of Rule 3(a) of Part One, Section I, A, of Annex I to Regulation

No 2658/87, the heading which provides the most specific description is to be preferred to headings providing a more general description. At the very least, by the application of rule 3(c), when goods cannot be classified by reference to 3(a) or (b), they must be classified under the heading which occurs last in numerical order.

11. The applicant states that the boards in question are continuously shaped, in that they are rounded. Boards rounded along their entire length can fall under commodity code 4409, as is explicitly shown in the French, English and German versions of these descriptions.

12. According to the applicant, BTI decisions to that effect were moreover issued in other countries for identical goods (the applicant refers to BTI Ref. FR-RTC-2015-002422, BTI Ref. NLRTD-2013-001482 and BTI Ref. DE11404/17-1). A previous decision by the Belgian administrative authorities also ruled in that sense (the applicant refers to a decision of 7 June 2017, with reference number 1140/2017/813/1267 D9896/17).

III.2.1.2. Position of the defendant

13. The administrative authorities are of the view that the goods in question must be classified under commodity code 4407 2983. General rule 3(a) of the previously cited rules on the interpretation of commodity codes does not apply. After all, the goods can be classified by the application of general rule 1. That rule states, *inter alia*, that, for legal purposes, classification is to be determined according to the terms of the headings and that the latter therefore take precedence over any other consideration. The rounding that was applied to the goods in question cannot be regarded as a continuous shaping. Indeed, the rounding does not serve to facilitate assembly.

14. The claim that the goods must be classified under commodity code 4407 2983 is supported by the Harmonised System Explanatory Notes (HS Explanatory Notes). Although those explanatory notes are not legally binding, it is the settled case-law of the Court of Justice that they are an important aid for interpreting the scope of the various tariff headings (see, *inter alia*, judgments of 11 April 2019, *X v Staatssecretaris van Financiën*, C-288/18, paragraph 28; of 13 September 2018, *Vision Research Europe*, C-372/17, paragraph 23, and of 19 February 2009, *Staatssecretaris van Financiën v Kamino*, C-376/07, paragraph 47). The defendant maintains that the rounding was not applied to facilitate the assembly of the goods or for the manufacture of mouldings. The HS Explanatory Notes to heading 4407, however, clearly state that wood which is not of rectangular or square cross-section and wood with slightly rounded angles must also be classified under heading 4407. It therefore cannot be inferred from the goods' objective characteristics and properties that the processing they have undergone is a further continuous shaping. Furthermore, wood with slightly rounded corners is classified under heading 4407.

15. The defendant considers itself not to be bound by other BTI decisions, given that have only relative binding force (Article 33(2) DWU (Douanewetboek van de Unie; Union Customs Code)) and the BTI decisions from other European countries referred to by the applicant do not pertain to identical goods.

16. Finally, the Belgian State notes that the issue of the tariff classification of the goods in question has already been submitted to the Comité Douanewetboek, afdeling tarief- en statistiek nomenclatuur (Customs Code Committee, Tariff and Statistical Nomenclature Section). However, there appears to be no consensus within the Comité Douanewetboek on the correct tariff classification.... Inter alia point 7.14 of the minutes of the 202nd meeting of that Committee ... refers to the various positions on this matter.

III.2.2. Assessment

17. As has been set out above in the positions of the parties, the discussion concerns the interpretation of commodity codes 4407 and 4409. The content of those commodity codes is set out in Regulation No 2658/87, as are the interpretation methods which are the subject of Annex I to that regulation. The discussion thus relates to the interpretation of EU law meaning that, by virtue of Article 19(3) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union, it may be the subject of a question referred for a preliminary ruling to the Court of Justice of the European Union.

18. Moreover, the presentation of the facts by the parties shows that there is no consensus at European level, either, on the interpretation of the relevant commodity codes with regard to the goods under discussion (see the reports of the Customs Code Committee). The Rechtbank also notes that there has apparently been no discussion between the parties on the nature of the goods described above. The discussion thus essentially addresses only the uniform interpretation of EU law, the assessment of which is the essence of a request for a preliminary ruling (see Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, Nos 1, 8 and 9, OJ C 380, 8/11/2019). The questions formulated by the parties should therefore be referred for a preliminary ruling.

19. In addition, the Rechtbank finds that the current discussion exclusively involves a point of EU law, such that no other specific national provisions are relevant (Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, No. 16, OJ C 380, 8/11/2019, and Article 94 of the Rules of Procedure of the Court of Justice of 25 September 2012).

20. The interpretation of the Combined Nomenclature is essential for the resolution of the dispute, since it revolves around the issuing of a BTI decision in which the question of the scope and interpretation of the commodity codes cited is raised.

21. The parties are in agreement on the questions to be referred for a preliminary ruling, and they are reproduced in essence.

V. COSTS

22. [...]

**FOR THOSE REASONS,
THE RECHTBANK,**

[...] [national procedural law aspects]

Before ruling on the substance of the claim, refers the following questions to the Court of Justice pursuant to Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union:

1) Should the Combined Nomenclature as is set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff — in the light also of the various language versions of tariff heading 4409 and the HS Explanatory Notes to tariff headings 4407 and 4409 — be interpreted as meaning that the goods which are the subject of the main proceedings, namely, planed wooden boards the four corners of which have been rounded over the entire length of the board, are to be regarded as being ‘continuously shaped’ and accordingly should be classified under tariff heading 4409 or can the rounding of the corners not be regarded as being ‘continuously shaped’ and should the goods therefore be classified under tariff heading 4407?

2) Is the size of the rounding determinative for classification under tariff heading 4407 or tariff heading 4409?

[...] Thus [...] delivered [...] on **17 January 2020**. [closing formula]

[...]